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No. 88-540

In the

Supreme Court of the United States

October Term, 1988

MARK VANNELLI,

Petitioner,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner claims that the legal question presented by his petition involves the standing of college athletes to sue under section 4 of the Clayton Act, 15 U.S.C. § 15. In fact, no such question was either presented to or decided by the Minnesota state courts of whose decisions the petition seeks review. Those decisions involved only questions of Minnesota law, which are not within the jurisdiction of this Court to review.

PARTIES TO THE PROCEEDINGS BELOW

This action was originally brought by petitioner, an individual, against respondent National Collegiate Athletic Association ("NCAA"), an unincorporated association of more than 900 universities, colleges, athletic conferences, and related educational institutions, and against one member of the NCAA, Northern Michigan University ("NMU"), both in their individual capacities and as representatives of a purported defendant class of all NCAA members. No defendant class was ever certified. NMU was not a party to the appellate proceedings below, review of which is sought by the petition, and some of petitioner's claims against it remain pending in Minnesota state court.

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JURISDICTION

Petitioner claims that this Court has jurisdiction to review the decisions below pursuant to 28 U.S.C. § 1257(3).[1] As will be argued hereafter, respondent submits that petitioner's jurisdictional allegation is erroneous and that this Court in fact does not have jurisdiction to review the decisions below, since those decisions involve only question of Minnesota law.

[1] Section 1257 has been amended effective September 25, 1988 (two days before this petition was filed), and § 1257(3) has been repealed. Act of June 27, 1988, Pub. L. 100-352, §§ 3, 7, 102 Stat. 662, 664. However, the new provision, § 1257(a), is identical in relevant part to former § 1257(3), so petitioner's mistaken invocation of the repealed provision is of no substantive significance.

RESTATEMENT OF THE CASE

The petition seeks review of a decision of the Minnesota Court of Appeals, which the Minnesota Supreme Court declined to review, affirming a summary judgment dismissing petitioner's claims against respondent National Collegiate Athletic Association ("NCAA") for alleged common law fraud, breach of contract, tortious interference with a "prospective commercially economically advantageous activity," and violation of the Minnesota Antitrust Law, Minn. Stat. § 325D.49 *et seq.* The action arose out of petitioner's career as an amateur college hockey player.

A. Factual Background

Petitioner enrolled in 1980 at Northern Michigan University ("NMU"), which had recruited him as a potential member of the school's intercollegiate hockey team and had awarded him an athletic scholarship. As a member of the NCAA, NMU's efforts in recruiting petitioner and the terms of the scholarship aid it was permitted to offer him were subject to NCAA rules, but the undisputed evidence before the state trial court when it granted summary judgment established that the NCAA had no involvement in or knowledge of NMU's recruitment efforts or the award of a scholarship to petitioner. Petitioner alleged that he was orally promised a four-year scholarship as an inducement for his enrolling at NMU, but the documents he signed before his enrollment clearly state that the scholarship was for a one-year term (subject to renewal), in accordance with NCAA rules.

Petitioner played college hockey during his freshman year at NMU, 1980–81, and his scholarship was renewed for the following year. In the fall of 1981, however, he was cut from the NMU team and was told that his scholarship would not be renewed at the end of the 1981–82 academic year.[2]

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[2] In agreeing to continue the scholarship through the end of the academic year, rather than terminating it immediately, NMU was complying with NCAA rules prohibiting such termination.

Instead of continuing his education (and his scholarship) at NMU, petitioner departed that school at the end of the Fall 1981 term and sought another college where he could make the hockey team. He alleges that he was hampered in this search by an NCAA rule providing that students transferring from one four-year college to another were ineligible to participate in NCAA **post-season** championship competitions for a year after their transfer. Although the transfer rule on its face placed no restriction on eligibility for either scholarship aid or regular season competition, petitioner claims that it was cited by the hockey coach at the University of Minnesota as a reason why that institution would not provide him a scholarship or allow him to join the hockey team in midseason.

Petitioner ultimately enrolled in January 1982 at the College of St. Thomas in St. Paul, Minnesota, which does not grant athletic scholarships. He competed as a member of the St. Thomas hockey team in the 1982–83, 1983–84, and 1984–85 seasons, and was graduated from St. Thomas in May 1985.

The undisputed evidence offered by the NCAA in support of its successful motion for summary judgment established that the NCAA had no knowledge of or direct involvement in any of the foregoing events. There is nothing in the record to suggest that anyone from the NCAA communicated with the petitioner or any college or university concerning petitioner's recruitment by NMU, his failure to make the NMU hockey team in 1981, his abandonment of his scholarship, his possible eligibility at the University of Minnesota, his eventual transfer to St. Thomas, or his eligibility after that transfer.[3] The only basis for petitioner's purported claims against the NCAA thus was the alleged detrimental effect on him of NCAA rules, applying generally to all student-athletes, that govern eligibility of transferring students and prohibit the granting of scholarships for longer than a year.

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[3] In late February 1982, after all the above-described events had occurred, and some six weeks or more after petitioner had enrolled at St. Thomas, his attorney finally did contact the NCAA, through its attorneys.

B. Proceedings Below

Petitioner first brought suit against the NCAA and NMU in the United States District Court for the District of Minnesota. His complaint in that court alleged claims under the United States Constitution, federal and state antitrust laws, and Minnesota common law. On September 25, 1985, the district court, by the Honorable Robert G. Renner, District Judge, granted summary judgment for the NCAA on all of petitioner's federal law claims. The court held that actions of the NCAA, as a private nongovernmental entity, did not constitute "state action" and therefore could not be held to violate the Fourteenth Amendment of the United States Constitution. It further held that the NCAA rules about which petitioner complained had not caused him injury to his "business or property" within the meaning of section 4 of the Clayton Act, 15 U.S.C. § 15, and that he therefore lacked standing to claim that those rules violated the federal antitrust laws. Having disposed on the merits of all of petitioner's federal law claims against the NCAA, the district court declined to exercise pendent jurisdiction over his state law claims, which it dismissed without prejudice. Appendix ("App") at A4–A8.[4]

Thus, it is not true, as petitioner states (Petition at 3), that the case at bar was brought in Minnesota state court only "in the interest of judicial economy" after the federal district court had made it impossible for him to pursue all of his claims against both defendants in a federal forum. On the contrary, the federal district court entered judgment on the merits against petitioner on his federal law claims against the NCAA. **Petitioner did not appeal from that judgment.**[5]

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[4] The district court dismissed petitioner's claims against NMU in their entirety on the ground that NMU, as an agency of the State of Michigan, was immune from suit in federal court pursuant to the Eleventh Amendment of the United States Constitution.

[5] In July 1987, almost two years after judgment was entered against him, petitioner did move the United States District Court, apparently pursuant to Rule 60, F. R. Civ. P., "to reinstate or reopen the antitrust claims of this action" or, alternatively, to issue a written opinion replacing the court's 1985 oral opinion. The court denied this motion as untimely by order dated August 24, 1987, and petitioner did not appeal from that order.

Instead, petitioner commenced the instant action in Minnesota state court against both the NCAA and NMU, reasserting the state law claims of his federal complaint, including his claim for alleged violation of Minnesota antitrust law; he did not reassert the federal law claims that the federal court had dismissed with prejudice. By order dated March 3, 1987 (made final by order dated June 1, 1987), the Minnesota District Court for the Second Judicial District granted the NCAA's motion for summary judgment in the instant case, dismissing all of petitioner's claims against the NCAA. In the only portion of its ruling relevant to the petition, it held that the standing provision of the Minnesota Antitrust Law, Minn. Stat. § 325D.57, should be interpreted consistently with the standing provision of the Clayton Act, 15 U.S.C. § 15. Therefore, in accordance with Minnesota common law principles of collateral estoppel, the court held that petitioner was barred from relitigating in state court the question of antitrust standing that had been decided adversely to him by the federal district court judgment from which he did not appeal.[6]

The Minnesota Court of Appeals, in an unpublished opinion dated April 19, 1988, affirmed the district court's judgment in favor of the NCAA in its entirety. App. at A2–A4. The Minnesota Supreme Court denied petitioner's application for discretionary review by order dated June 29, 1988. App. at A1. The present petition was timely filed on September 27, 1988.

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[6] The court also granted summary judgment in favor of NMU as to the state antitrust claims. Petitioner's common law claims against NMU remain pending in the state trial court.

ARGUMENT

THIS COURT LACKS JURISDICTION TO REVIEW THE DECISIONS BELOW

The petition for writ of certiorari to the Minnesota Court of Appeals and the Minnesota Supreme Court should be denied. The decisions of those courts involved only questions of Minnesota antitrust and collateral estoppel law that are not within the jurisdiction of this Court to review. Moreover, those decisions did not decide — indeed, the state courts did not have jurisdiction to decide — the question of federal antitrust standing that the petition attempts to raise. That question was resolved adversely to petitioner by the judgment of the federal district court in September 1985, from which petitioner did not appeal and which therefore became final almost three years ago.

The Minnesota trial and appellate courts did not purport to decide whether petitioner had standing to sue under the Clayton Act. Petitioner's complaint in this action did not assert a cause of action under the Clayton Act, and the state courts would have been unable to decide any such claim if it had been asserted, since federal courts have exclusive jurisdiction over claims under the Sherman and Clayton Acts. *Freeman v. Bee Machine Co.*, 319 U.S. 448 (1943); *General Investment Co. v. Lake Shore & Mich. So. Ry.*, 260 U.S. 261 (1922); *Blumenstock Bros. Advertising Agency v. Curtis Publishing Co.*, 252 U.S. 436 (1920). The Minnesota courts decided only that, under applicable principles of state common law, the federal court's decision that petitioner had no standing under the Clayton Act (which they correctly accepted as given) estopped petitioner from claiming standing under the Minnesota Antitrust Law. In reaching this conclusion, the state courts also decided that the test of standing under Minnesota antitrust law was "identical" to the test of federal antitrust standing that the federal district court had applied — a matter of Minnesota statutory interpretation that did not challenge or require re-examination of the holding of the federal court.

In short, the decisions below resolved only two questions — one of state collateral estoppel law and one of interpretation of a state

statute. Neither of these qustions is within this Court's limited jurisdiction to review state court decisions, which extends only to:

> [f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had ... where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a). No such question was presented to or decided by the courts below.

The question of federal antitrust standing that petitioner claims is presented by his petition in fact was decided only by the United States District Court in reaching its September 1985 judgment.[7] Petitioner could have obtained review of that decision by appealing the judgment to the United States Court of Appeals for the Eighth Circuit. He did not do so, and the opportunity for such review has long since been lost. Having failed to take the appeal that was available to him within the federal judicial system, petitioner cannot obtain "back-door" review of the United States District Court's decision merely because Minnesota courts, deciding questions of Minnesota law, gave that decision the effect to which its finality entitled it under state law.

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[7] Contrary to petitioner's contention (Petition at 6), the judgment of the federal district court on this question is not at odds with the recent decision in *McCormack v. NCAA*, 585 F.2d 1338 (5th Cir. 1988). In *McCormack*, the Fifth Circuit expressly refused to decide whether the football player-plaintiffs had antitrust standing, but merely assumed that they did. *Id.* at 1343. The court went on to hold that the plaintiffs' allegation that the NCAA's rules limiting scholarship aid and regulating eligibility interferred with their ability to sell their athletic "services" to the highest collegiate "bidder," *see id.* at 1342 — the identical theory as petitioner asserts — failed to state a claim on which relief could be granted, because whatever restraints the NCAA rules arguably imposed were not unreasonable as a matter of law.

CONCLUSION

The question of federal antitrust standing that petitioner claims is presented by his petition was not decided by the Minnesota courts of whose decisions the petition seeks review. The questions that those courts did decide are questions solely of state law, which this Court lacks jurisdiction to review. For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted.

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